

COUNTY ISSUES WORKGROUP

CONSENSUS ITEM

ITEM NO.: 3 Version Date: November 26, 2001

ITEM TITLE: Business Associate Relationships within the Hybrid Entity

Premise

A non-health care component has a business associate relationship with a health care component if the following conditions are met.

- ~~///~~ The non-health care component is acting on behalf of, or provides services to or for the health care component **and** one of the following.
- ~~///~~ The non-health care component performs or assists in the performance of a function or activity involving the use or disclosure of individually identifiable health information.
- ~~///~~ The non-health care component provides a service, which involves the disclosure of individually identifiable health information received from the health care component or from another business associate of the health care component.

A non-health care component becomes part of the health care component (i.e., extends the health care component) when engaged in a business associate relationship as defined above. The business associate activities and functions become part of the covered entity subject to the HIPAA Privacy Rule, unless a specific exclusion is provided in the Rules.

Reasoning

HIPAA Privacy Rule, section 164.504(a) regulation text, states that (1) components of a covered (hybrid) entity that perform covered functions are part of the health care component. Further,

“(2) Another component of the covered entity is part of the entity’s health care component to the extent that:

- (i) It performs, with respect to a component that performs covered functions, activities that would make such other component a business associate of the component that performs covered functions if the two components were separate legal entities; and
- (ii) The activities involve the use or disclosure of protected health

information that such other component creates or receives from or on behalf of the component that performs covered functions.”

Since “another” (i.e., non-health care) component is part of the same legal entity as the health care component, e.g., the county, it can not be a business associate, but it can have a business associate relationship with the health care component.

HIPAA Privacy Rule, section 106.103, defines a business associate as follows.

“(1) Except as provided in paragraph (2) of this definition, business associate means, with respect to a covered entity, a person who:

- (i) On behalf of such covered entity or of an organized health care arrangement (as defined in §164.501 of this subchapter) in which the covered entity participates, but other than in the capacity of a member of the workforce of such covered entity or arrangement, performs, or assists in the performance of:
 - (A) A function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or
 - (B) Any other function or activity regulated by this subchapter; or
- (ii) Provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation (as defined in §164.501 of this subchapter), management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of individually identifiable health information from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person.”

The business associate definition lists example activities, (e.g., claims processing, data analysis and legal services). The essential elements of the definition appear to be the relationship (act on behalf of, provide services to), and the use or disclosure of individually identifiable health information.

Therefore, we conclude that any county business process, function, or activity that meets the essential elements of the business associate definition is subject to the HIPAA Privacy Rule, unless specifically excluded by the HIPAA Privacy Rule; e.g., program eligibility determination by the County Welfare Department.

Implications

Privacy Rule: Since business associate type functions are included in the health care component, regardless of which county organization is performing the service (health care or non-health care component), these functions are part of the covered entity when applying the Privacy Rule.

Since true business associates must be, by definition, separate legal entities, the HIPAA rules pertaining to business associates do not apply to subdivisions of a single county government.

Where separate legal entities are both government entities, HIPAA Privacy Rule, section 164.504(e)(3)(i) regulation text, states that if a covered entity and its business associate are both governmental entities, the covered entity may comply with the business associate agreement requirements by entering into a memorandum of understanding that accomplishes the objectives of the business associate agreement.

Although a memorandum of understanding detailing business associate requirements within a single county may be good business practice, there is no indication that such internal agreements are mandated by the HIPAA rules.

Electronic Transactions Rule: The hybrid entity definition which incorporates the business associate type relationships into the health care component is specifically limited to Subpart E, the Privacy Rule. Thus within a County government, the transaction rules apply only to data exchanges among the health care components and not to the business associate type relationships with non-health care components (reference Consensus Item #5).

HIPAA Electronic Transactions Rules, section 162.923(a)-regulation text, provides the following general rule regarding the applicability of electronic transaction standards within a covered entity (health care component).

“Except as otherwise provided in this part, if a covered entity conducts with another covered entity (or within the same covered entity), using electronic media, a transaction for which the Secretary has adopted a standard under this part, the covered entity must conduct the transaction as a standard transaction.”

ITEM CHRONOLOGY

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SUPPLEMENTAL MATERIALS

Links to supporting legal and content expert opinions.